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Attorneys for Defendants
WELLPATH MANAGEMENT, INC.

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

ALAMEDA COUNTY MALE PRISONERS
And Former Prisoners, DANIEL GONZALEZ,
et al. on behalf of themselves and others
similarly situated, as a Class, and Subclass;

**ALAMEDA COUNTY FEMALE
PRISONERS** And Former Prisoners, JACLYN
MOHRBACHER, ERIN ELLIS, DOMINIQUE
JACKSON, CHRISTINA ZEPEDA, ALEXIS
WAH, AND KELSEY ERWIN, et al on behalf
of themselves and other similarly situated,

Plaintiffs,

v.

**ALAMEDA COUNTY SHERIFF'S
OFFICE**, ALAMEDA COUNTY, Deputy Joe,
Deputy Ignont (sp) Jane ROEs, Nos. 1 – 25;
WELLPATH MANAGEMENT, INC., a
Delaware Corporation (formerly known as
California Forensic Medical Group) a
corporation; its Employees and Sub-
Contractors, and Rick & Ruth ROEs Nos. 26-
50; **ARAMARK CORRECTIONAL
SERVICES, LLC**, a Delaware Limited
Liability Company; its Employees and Sub-
Contractors, and Rick & Ruth ROES Nos.
51-75,

Defendants.

Case No.: 3:19-cv-07423 JSC

**DECLARATION OF PETER G.
BERTLING IN SUPPORT OF
DEFENDANT WELLPATH
MANAGEMENT, INC.'S
MOTION TO DISMISS
PLAINTIFF MICHAEL
LOCKHART PER FRCP
RULE 37(b)(2)(A)**

Hearing Date: November 16, 2023
Hearing Time: 10:00 a.m.
Hearing Dept: 8

Action Filed: November 12, 2019
Judge: Hon. Jacqueline Scott Corley
Ctrm: 8—19th Floor

3:19-cv-07423 JSC

**DECLARATION OF PETER G. BERTLING IN SUPPORT OF DEFENDANT WELLPATH
MANAGEMENT, INC.'S MOTION TO DISMISS PLAINTIFF MICHAEL LOCKHART
PER FRCP RULE 37(b)(2)(A)**

1 I, Peter G. Bertling declare:

2 1. I am an attorney licensed to practice before all Courts of the State of
3 California and before this District Court. I am the owner of Bertling Law Group, counsel
4 of record for Defendant Wellpath Management, Inc., in this action. The facts set forth in
5 this declaration are based on my personal knowledge.

6 2. On July 13, 2023, my office served a notice of taking deposition of plaintiff
7 Michael Lockhart (“Mr. Lockhart”) on counsel for all parties. The deposition was
8 noticed for August 25, 2023, at 10:00 a.m. Attached as **Exhibit A** is true and correct
9 copy of the July 13, 2023, deposition notice with proof of service.

10 3. On August 21, 2023, Plaintiffs’ counsel advised all Defendants that Mr.
11 Lockhart would not be appearing for his deposition and the deposition would not be
12 rescheduled. Plaintiffs’ counsel thereafter declined to join in a stipulation to dismiss Mr.
13 Lockhart’s claims.

14 4. On September 22, 2023, Defendants sought a court order compelling Mr.
15 Lockhart to appear for deposition. See ECF No. 317.

16 5. On September 25, 2023, this Court Ordered Defendants to serve a deposition
17 notice on plaintiffs’ counsel noticing the deposition of Mr. Lockhart on October 5, 2023,
18 by 5:00 p.m. on September 25, 2023. The Court also Ordered: “Plaintiffs’ counsel shall
19 serve Mr. Lockhart with a copy of this Order and the information regarding the time and
20 place of the deposition. Plaintiffs’ counsel shall file proof of service by noon, September
21 26, 2023.” See ECF No. 320, p. 2.

22 6. My office complied with this order and on September 25, 2023, before 5:00
23 p.m. we served a notice of taking deposition of Mr. Lockhart for October 5, 2023.
24 Attached as **Exhibit B** is a true and correct copy of the September 25, 2023, deposition
25 notice with proof of service. Plaintiffs’ counsel did not appear to have provided notice to
26 Mr. Lockhart of his deposition in accord with the Court Order. See ECF No. 324.

27 7. On October 3, 2023, plaintiffs’ counsel advised Mr. Lockhart would not be
28 appearing for his October 5, 2023, deposition and would stipulate to dismiss his claims.

3:19-cv-07423 JSC

- 1 -

DECLARATION OF PETER G. BERTLING IN SUPPORT OF DEFENDANT WELLPATH
MANAGEMENT, INC.’S MOTION TO DISMISS PLAINTIFF MICHAEL LOCKHART
PER FRCP RULE 37(b)(2)(A)

1 My office drafted a proposed stipulation for dismissal of Mr. Lockhart with prejudice and
 2 sent it to all counsel the same day. Attached as **Exhibit C** is a true and correct copy of
 3 the October 3, 2023, email correspondence reflecting this exchange.

4 8. On October 4, 2023, plaintiffs' counsel advised she would not execute the
 5 stipulation for dismissal unless it was without prejudice. Attached as **Exhibit D** is a true
 6 and correct copy of plaintiffs' counsel's declination to dismiss Mr. Lockhart with
 7 prejudice.

8 9. On October 5, 2023, attorney Jemma Parker Saunders of my office,
 9 appeared for the deposition of Mr. Lockhart, along with the court reporter, counsel for
 10 Aramark and counsel for Alameda County. Neither Mr. Lockhart nor any of his counsel
 11 appeared. Attached hereto as **Exhibit E** is a true and correct copy of the deposition
 12 transcript from October 5, 2023, with exhibits, reflecting Mr. Lockhart's non-appearance.

13 10. As a result of plaintiffs' failure to dismiss Mr. Lockhart and his non-
 14 appearance at his deposition in violation of the Court's order, my office has incurred the
 15 following expenses:

- 16 a. Court Reporter fees in the sum of \$300 for the October 5, 2023, non-
 17 appearance. Attached as **Exhibit F** is a true and correct copy of the invoice
 18 from CAL Reporting.
- 19 b. Attorney fees in the sum of \$750 associated with preparing this motion to
 20 dismiss.
- 21 c. Attorney fees in the sum of \$250 associated with preparing and attending the
 22 deposition of Mr. Lockhart.

23 I declare under penalty of perjury under the laws of the United States of America
 24 and the State of California that the forgoing is true and correct and that if called to do, I
 25 could and would competently testify thereto. Executed on October 12, 2023, at Santa
 26 Barbara, California.

27 /s/ Peter G. Bertling

28 Peter G. Bertling

Declarant

3:19-cv-07423 JSC